1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA 10 11 HERMAN TIEMENS, JR., 12 Petitioner. No. C 02-1925 CRB (PR) 13 ORDER v. 14 ANNA RAMIREZ-PALMAR, (Doc # 8) 15 Respondent. 16 17 18 On April 19, 2002, petitioner filed a petition for a writ of habeas corpus 19 under 28 U.S.C. § 2254 challenging an unspecified conviction from the Superior 20 Court of the State of California in and for the County of Sonoma. The court notified petitioner in writing on that date that the action was deficient because he 21 22 did not pay the requisite \$5.00 filing fee or, instead, submit a signed and 23 completed court-approved in forma pauperis ("IFP") application. Petitioner was 24 advised that failure to file the requested items within 30 days would result in 25 dismissal of the action. 26 On May 31, 2002, the petition was dismissed without prejudice because 27 "[m]ore than 40 days ha[d] elapsed . . . [and] petitioner ha[d] not filed the requisite 28 items, or sought an extension of time to do so."

Petitioner moved to reopen the closed file on the ground that he had finally obtained the requisite items. On July 2, 2002, the court denied petitioner's request, but explained: Because the dismissal was without prejudice, "petitioner is free to refile his petition as a new action as long as it is accompanied by either the requisite \$5.00 filing fee or a signed and completed court-approved [IFP] application. Petitioner is advised that should he refile his petition, he must specify the state criminal conviction he wishes to challenge in federal court as well as the grounds/reasons why he claims the conviction is unconstitutional."

Nearly five years later, petitioner has submitted for filing in this closed file a new petition for a writ of habeas corpus accompanied by a signed and completed court-approved IFP application. The clerk is instructed to STRIKE the petition and IFP application from this closed file (doc # 8) and file them as a new habeas action under 28 U.S.C. § 2254 (suit code 530).

SO ORDERED.

DATED: June 11, 2007

CHARLES R. BREYER United States District Judge